

AMENDMENT NO. 1 TO THE
MEMORANDUM OF AGREEMENT
BETWEEN THE INDIAN HEALTH SERVICE
AND THE
THE HOPI TRIBE

PROJECT PH 18-V31

CONSTRUCTION OF SANITATION FACILITIES
TO SERVE EXISTING HOMES
ON THE HOPI INDIAN RESERVATION
NAVAJO AND COCONINO COUNTIES, ARIZONA

Public Law 86-121



IN WITNESS WHEREOF, the parties have hereto subscribed their names.

FOR THE HOPI TRIBE

Chairman, having been duly authorized to enter into this
Agreement on behalf of the Hopi Tribe, as evidenced by the
attached copy of the resolution made by the Hopi Tribal Council.

Date

FOR THE INDIAN HEALTH SERVICE

Area Director, Phoenix Area Indian Health Service,
Department of Health and Human Services

Date

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1.0 PREAMBLE

This amended agreement is made between the Indian Health Service, hereinafter called IHS, acting through the Director, Phoenix Area IHS, Department of Health and Human Services, acting on behalf of the United States of America, under and pursuant to the provisions of Public Law 86-121 (42 U.S.C. 2004a; 73 Stat. 267); and the Hopi Tribe, hereinafter called the Tribe, acting through the Tribal Council.

WHEREAS, This amendment number one (1) to the MOA replaces the existing MOA for Project PH 18-V31, signed by the Tribe on 1/14/2019 and the IHS Phoenix Area Director on 1/23/2019, and

WHEREAS, The Tribe is desirous of obtaining a satisfactory water supply for homes on the Hopi Indian Reservation, and

WHEREAS, the Tribe, acting through the Chairman of the Tribal Council, submitted a Project Proposal dated May 2019, requesting IHS assistance under Public Law 86-121 to construct water supply facilities to serve approximately 1,254 homes on the Hopi Indian Reservation; and

WHEREAS, the IHS is desirous of assisting in the construction of water supply facilities for the homes to protect the health of the Tribal members and to safeguard the environment of the Hopi Indian Reservation; and

WHEREAS, the Tribe has reviewed and concurs with the provisions of the attached Project Summary.

NOW THEREFORE, in order to carry out the project as set forth in the attached Amendment No. 1 to the Project Summary entitled "Hopi Arsenic Mitigation Project", dated July, 2019, the parties mutually agree that:

2.0 FINANCIAL OBLIGATIONS

2.1 PROJECT FUNDING SUMMARY

2.1.1 Funding Contributions

FY 2018 IHS	\$11,000,000.00
FY 2018 EPA	3,000,000.00
FY 2019 EPA	1,800,000.00
FY 2019 IHS	<u>2,000,000.00</u>
Total Project Funding	\$17,800,000.00

2.1.2 Funding Allocation

Construction and Design	\$17,700,000.00
IHS NEPA Retainage	<u>\$100,000.00</u>
Total Project Funding	\$17,800,000.00

- 2.1.3 IHS shall provide funding for all materials, supplies, equipment, and labor for the installation of water supply facilities as provided for in the attached Project Summary, and not otherwise provided for in this agreement. The total contribution amounts identified in Section 2.1.1 shall not be exceeded without a fully executed amendment to this agreement.
- 2.1.4 IHS shall utilize project funds as indicated in Section 0 for IHS project NEPA support expenses.
- 2.1.5 The Tribe shall provide the required sanitation facilities and services for its direct benefit using a P.L. 93-638 construction contract with IHS. IHS shall provide technical assistance and contribute funds to the Tribe for the approved cost of the sanitation facilities and services in accordance with the provisions of this agreement.
- 2.1.6 IHS shall release contributions to the Tribe as provided for in this amended Agreement upon:
 - a. Execution of this amended agreement by all parties; and
 - b. Receipt of written request from the Tribe for the required funds; and
 - c. Certification from the IHS Project Engineer that the amount of funds requested is required to make timely payments in accordance with the project budget for the supplies, materials, equipment, and services being obtained under the provisions of this agreement; and
 - d. In accordance with the Advance Payment Plan to be negotiated between IHS and the Tribe; and
 - e. Approval by the Phoenix Area Office.

3.0 AGREEMENT PROVISIONS

3.1 TRIBAL LANDS

- 3.1.1 The Tribe hereby grants permission for the IHS, and its representatives to enter upon or across the lands under the jurisdiction of the Tribe for the purpose of carrying out the project outlined in the attached Project Summary and provided for in this agreement and further agrees to waive all claims which may arise by reasons of such entry, except those which may be recognized under the Federal Tort Claims Act.
- 3.1.2 The Tribe will obtain without charge to the IHS all easements and/or rights-of-way on or over lands as in the judgment of the IHS may be necessary for the provision and operation of any sanitation facilities provided for herein and waives any claim for compensation and damages therefore.
- 3.1.3 The Tribe will obtain without charge to the IHS all land necessary for the construction of the facilities provided in the Project Summary. All interests in such lands, easements, and rights-of-way shall remain with the Tribe, except as otherwise provided for in this Agreement.

3.2 HISTORIC PRESERVATION AND ENVIRONMENTAL REVIEW

- 3.2.1 That the Tribe will provide assistance in complying with the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) by informing IHS of any traditional cultural properties which might be affected by construction of the project. The Tribe shall take appropriate steps to identify traditional cultural properties which could be affected by the project, including contacting traditional cultural leaders or other tribal members who may have knowledge about such locations, sites, or objects.
- 3.2.2 That the IHS shall consult with the Tribe regarding excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) and the implementing regulations at 43 CFR Part 10. This amended Agreement shall serve as official notice to the Tribe that the proposed sanitation facilities construction may result in inadvertent discoveries, and that any such discoveries shall be subject to the above regulations, including consultation between the IHS and the Tribally designated cultural resources representative and disposition of human remains or related cultural items. If the Tribe is administering construction of the sanitation facilities, through a Tribal contract or force account, it shall assume full responsibility for compliance with 43 CFR Part 10. [Note: The IHS remains responsible for complying with the regulations implementing Section 106 of the National Historic Preservation Act regarding post-review discoveries at 36 CFR 800.13]
- 3.2.3 IHS is required to perform an Environmental Review on all projects or ensure compliance with the National Environmental Policy Act and other environmental laws and regulations. It is unknown what level of effort will be required to complete the Environmental Review due to the very nature of the review process. Therefore, IHS will be only responsible for costs as outlined in Section 0. Additional costs will be handled through either negotiated cost sharing, reduction of project scope, changed project scope, or cancellation of the project.
- 3.2.4 The project, or any portion thereof, may be deemed unfeasible if its implementation would violate the National Environmental Policy Act or other environmental laws and regulations

3.3 TRIBAL CONTRIBUTIONS

- 3.3.1 The Tribe will appoint a representative who will perform the following functions:
 - a. Coordinate the conduct of the Tribe's participation under this agreement including, active promotion of project participants at meetings and obtaining consent of the project participants; and
 - b. Obtaining Tribe cooperation in fulfillment of labor responsibilities assumed by the Tribe under this agreement; and
 - c. Provide the IHS with information available to the Tribe that relates directly to this project, to the extent possible; and

- d. Attend the monthly inspections, milestone inspections, and final inspection in coordination with the IHS project engineer.

3.3.2 Subject to the negotiation and execution of a 25 CFR 900 Subpart J construction contract (Public Law 93-638, Title I, Subpart J Regulations) between the Tribe and IHS, the Tribe agrees to provide all materials, supplies, equipment, and labor to design and construct all proposed sanitation facilities described in the Project Summary.

3.4 INDIAN HEALTH SERVICE CONTRIBUTIONS

3.4.1 The IHS project engineer shall coordinate IHS participation in the project.

3.4.2 IHS will provide to the Tribe, as needed to meet the government's requirements, consultations, site visits, and final acceptance necessary for construction of the sanitation facilities in accordance with the attached Project Summary.

3.4.3 IHS will provide without charge to the Tribe:

- a. Coordination in obtaining the necessary reviews under the National Environmental Policy Act (NEPA) and applicable laws, regulations, and executive orders. Reviews shall be completed in accordance with IHS environmental review policies and procedures; and
- b. Consultation as to the proper utilization, maintenance, operation and protection of the facilities provided for herein; and

3.4.4 IHS shall provide project support to the Tribe, including but not limited to the following:

- a. Review and approval of design drawings and specifications.
- b. Intermittent site visits during installation of sanitation facilities for the purpose of verifying compliance with the contract plans, specifications, and minimum IHS standards
- c. Coordination with the designated Tribe representative for the joint final inspection as provided for in this agreement.

3.5 TRANSFER OF FACILITIES

3.5.1 All parties understand that the facilities constructed (including equipment, land, and supplies purchased) under this agreement with IHS or contributed funds are at no time the property of the IHS, but rather belong to the Tribe, which shall operate and maintain such facilities properly, until or unless transferred to other parties.

3.5.2 Because IHS does not at any time own the facilities constructed, no formal transfer agreement is necessary. In lieu of a transfer agreement, the IHS will notify the Tribe when IHS participation in the project is complete.

- 3.5.3 The Tribe shall transfer on site water and wastewater facilities to individual homeowners. Upon completion of the construction the homeowners are responsible for operation and maintenance of the facilities. Facilities constructed under this agreement at all times belong to the Tribe until transferred to individual homeowners or other parties.
- 3.5.4 It is the understanding of the parties to the Agreement that participants whose homes will be connected to the Tribe's facilities will be the responsible entity for the payment of the monthly service charge, unless funds are identified for operation and maintenance from another source, and that these participants must adhere to the rules and regulations adopted by the Tribe or governing utility organization.

3.6 OPERATION AND MAINTENANCE FEES AND ORDINANCES

- 3.6.1 The Tribe will establish connection fees and user rates and collect such charges from individuals served by the system as are necessary to sustain the operation, maintenance, and repair of the Tribe water supply. Alternatively, the Tribe may provide this revenue from another dedicated revenue source.
- 3.6.2 The Tribe agrees to enact and enforce appropriate ordinances or regulations governing: (1) Connection to the Tribe water supply by the residents of the reservation; (2) The methods and materials to be used in making connections to the Tribe water supply system in a safe and sanitary manner; and, (3) the continued operation, maintenance, and repair of individual water supply and waste disposal facilities in a safe and sanitary condition by the persons served thereby.

3.7 PROJECT SCHEDULE

- 3.7.1 In the interest of coordination, understanding, and economy, before construction of the project begins, Tribe shall prepare a schedule for the conduct of the project. The schedule may be modified or amended by the Tribe when necessary to carry out the project.
- 3.7.2 It is important that the installation of the water supply facilities provided for herein be completed as soon as practicable in accordance with the schedule of the Tribe.
- 3.7.3 That in the event actual construction of this project cannot be initiated, for any reason within 18 months of execution of this agreement, the IHS reserves the right to cancel the project and use the funds earmarked therefore for other projects which lack impediments to prompt construction. If the condition, which impeded construction, is resolved following cancellation, the Phoenix Area Office, will give high priority to funding the project from appropriated sanitation facilities funds available at that time or from future appropriations for sanitation facilities.

3.8 PROJECT CLOSEOUT AND REIMBURSEMENT

- 3.8.1 The IHS will close out the project when it determines that all applicable administrative actions and all required project work have been completed.
- 3.8.2 Except as otherwise provided, project records shall be maintained for three years from the project completion date. These records include all financial records, supporting documents, procurement documents, titles, equipment records, including but not limited to: time sheets, cancelled checks, invoices, and purchase orders and shall be available upon request by the IHS, Inspectors General, or other designated representatives.
- 3.8.3 All records shall be retained until completion of any litigation, claim, negotiation, audit, or other action initiated prior to the end of the 3 year period until resolution of the issues which arise from it.

3.9 WARRANTIES

- 3.9.1 The Tribe will obtain one-year warranties from contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. This year will commence from the date of acceptance of the work involved. IHS will assist the Tribe or responsible operation and maintenance organization in obtaining benefits and protection of all warranties on equipment or work provided under this Agreement.

3.10 DISPUTE RESOLUTION

- 3.10.1 The parties to this Agreement agree to resolve all disputes regarding the provisions of this agreement among the parties through the Phoenix Area IHS's established administrative procedures, first. If a dispute cannot be resolved locally, the parties agree that the next administrative procedure is an appeals board established at the IHS headquarters level, which will make a recommendation to the IHS Director, who will exercise final authority for the IHS in the administrative review of all disputes.

3.11 TERMINATION OF THE AGREEMENT

- 3.11.1 Any party to the MOA may terminate its relationship with the other MOA parties prior to project completion upon 30 days advance notice in writing to all other parties.
- 3.11.2 If the MOA is terminated by any of the parties prior to completion of the project, all unexpended funds will be returned to the contributors in a prorated manner and in accordance with the transfer provisions contained herein. All in-place sanitation facilities will be transferred in accordance with the provisions of the MOA. IHS may elect to transfer or retain any or all materials and equipment purchased with IHS funds and may request the Tribe to transfer to IHS materials purchased by the Tribe with IHS funds. IHS will return unused IHS funds to bulk accounts at the Area office for commitment to other projects as appropriate.

3.12 ADDITIONAL SERVICES

3.12.1 The Tribe and IHS agrees that additional services may be required to complete the project scope. These services are not considered basic services to be performed by IHS and are above and beyond the services provided under the IHS contributions as outlined in Section 3.4. These services shall include but not be limited to:

- a. A soils engineer or other consultant when such services are deemed necessary, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions.
- b. Assistance of professional cultural resources personnel required for discoveries or resources anticipated after the completion of the final drawings.
- c. Assistance of professional environmental resource personnel required for delineation of wetlands, threatened and endangered species or other NEPA related issues anticipated after the completion of the final drawings.
- d. Assistance in construction testing as necessary to insure that the materials and methods furnished by the contractor(s) are in conformance with the contract plans and specifications. Such testing includes but is not limited to in-place density tests on backfill material, gravel gradation analysis, concrete slump and compression tests, and asphalt material composition tests. The IHS shall monitor and direct any subsurface explorations that are performed by others.
- e. Assistance in providing aerial photography, topographic mapping and vertical bridging as necessary to aid in the design of the project and preparation of construction drawings.
- f. An architect or other consultant when such services are deemed necessary, including reports, structural design, detail drawings, and other necessary operations for determining structural conditions.

3.12.2 These services will be initiated by the Tribe and be charged directly to the project account. Funds for additional services will be provided from amounts reserved for construction in Section 0.

3.13 FINAL INSPECTION

3.13.1 The Tribe shall notify the IHS when the community facility or each operational unit of the community facility is substantially complete and ready for beneficial use by the Tribe, and confirm the schedule of the joint final inspection of the Project.

3.13.2 Representatives from the Tribe, IHS, Contractor, and other interested parties shall conduct a joint final inspection to detect possible construction deficiencies to be corrected by the responsible construction entity. The community facility or operational unit may be placed into operation to provide service to the consumer.